

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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EMILY SEARS,

Plaintiff,

-v-

8:18-CV-909  
(DNH/CFH)

GEOFFREY P. CARMICHAEL, in his personal  
and official capacity; OFFICER WENSKE, in his  
personal and official capacity; OFFICER CROMB,  
in his personal and official capacity; TROOPER  
JOHN MOODY, in his personal and official  
capacity; SARANAC LAKE POLICE  
DEPARTMENT; TOWN OF TUPPER LAKE;  
TOWN OF SARANAC LAKE; TUPPER LAKE  
POLICE DEPARTMENT; and DOES 1-3,

Defendants.  
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APPEARANCES:

OFFICE OF NOREEN E. MCCARTHY  
Attorney for Plaintiff  
P.O. Box 756  
Keene Valley, NY 12943

NOREEN E. MCCARTHY, ESQ.

DAVID N. HURD  
United States District Judge

**DECISION and ORDER**

Represented plaintiff Emily Sears brought this civil rights action alleging that defendants violated her rights under the United States Constitution. On August 6, 2018, the Honorable Christian F Hummel, United States Magistrate Judge, advised by Report-Recommendation that some of plaintiff's claims be dismissed and that the complaint otherwise be permitted to proceed. Plaintiff has filed timely objections to the Report-

Recommendation. To the extent plaintiff contends the facts stated in the Report-Recommendation are materially incorrect, even taking the "clarified" facts as true, the outcome is still the same. Plaintiff cannot maintain Eighth or Fourteenth Amendment causes of action as the Fourth Amendment properly covers her excessive force claim. Thus, her Fourth Amendment claim will be permitted to proceed.

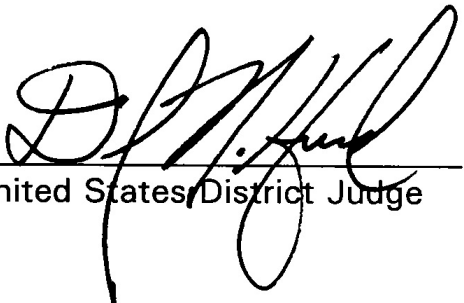
Based upon a de novo review of the portions of the Report-Recommendation to which plaintiff objected, the Report-Recommendation is accepted in whole. See 28 U.S.C. § 636(b)(1).

Therefore, it is

ORDERED that

1. Plaintiff's claims against the individual defendants in their official capacities are DISMISSED with prejudice;
2. Plaintiff's Eighth Amendment and Fourteenth Amendment excessive force claims are DISMISSED with prejudice; and
3. The remainder of plaintiff's complaint shall proceed.

IT IS SO ORDERED.

  
United States District Judge

Dated: February 13, 2019  
Utica, New York.